

December 10, 2003

VIA FEDERAL EXPRESS

Thomas M. Dorman
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

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DEC 10 2003

PUBLIC SERVICE
COMMISSION

**Re: *In the Matter of North Central Communications, Incorporated's Petition for
Designation as an Eligible Telecommunications Carrier; Case No. 2003-00397***

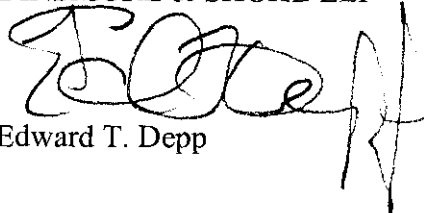
Dear Mr. Dorman:

Enclosed please find the original and eleven copies of the Petition for Confidential Treatment of Certain Information in North Central Communications, Incorporated's Responses to the Commission's Initial Data Requests to be filed of record in this action. Please file stamp one of the copies and return it to our paralegal, Ms. Jody Perry.

Thank you for your assistance with this matter.

Sincerely,

DINSMORE & SHOHL LLP


Edward T. Depp

ETD/pa
Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

PUBLIC SERVICE
COMMISSION

NORTH CENTRAL COMMUNICATIONS,)
INCORPORATED'S PETITION FOR)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)

Case No. 2003-00397

**PETITION FOR CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION
IN NORTH CENTRAL COMMUNICATIONS, INCORPORATED'S RESPONSES
TO THE COMMISSION'S INITIAL DATA REQUESTS**

North Central Communications, Incorporated ("NCC"), by counsel, pursuant to 807 KAR 5:001 § 7 and KRS 61.878(1)(c)(1)-(2), requests that the Public Service Commission of the Commonwealth of Kentucky ("the Commission") accord confidential treatment to the information provided in response to Question No. 5 of the Commission's initial data requests (the "Information").¹ In support of its motion, NCC states as follows.

I. Applicable Law.

807 KAR 5:001 § 7(2) sets forth a procedure by which certain information filed with the Commission may be treated as confidential. Specifically, the party seeking such confidential treatment of certain information must "[set] forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential...." 807 KAR 5:001 § 7(2)(a)(1).

The Kentucky Open Records Act, KRS 61.870 et seq., exempts certain records from the requirement of public inspection. See KRS 61.878. In particular, KRS 61.878 provides as follows.

¹ Pursuant to 807 KAR 5:001 § 7(2)(a)(2), a copy of the Information, highlighted in transparent ink, is attached to the original (only) of this motion.

- (1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction...
- (c) 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records....

Id.

II. The Information Should Be Classified Confidential.

Read in conjunction, 807 KAR 5:001 § 7(2)(a)(1) and KRS 61.878(1)(c)(1) provide that the Commission may classify the Information as confidential if the open disclosure of the Information to the general public "would permit an unfair commercial advantage to competitors of the entity that disclosed the records...." *See* KRS 61.878(1)(c)(1). For the reasons set forth below, the disclosure of the Information to the general public "would permit an unfair commercial advantage to competitors of [NCC]." *Id.* Accordingly, the Information should be classified confidential.

Question No. 5 of the Commission's initial data requests that NCC "[p]rovide a detailed history of plant and equipment improvements or investments by NCC since it began providing competitive local exchange service." Appendix A to an Order of the Kentucky Public Service Commission in Case No. 2003-00397 dated November 10, 2003. NCC's response to that data request details the specific components of its proprietary network as well as the means by which those components are combined to provide NCC's proprietary CLEC services. NCC's response to that data request also informs the Commission of the total dollar amount invested in its network and other appurtenant equipment.

The disclosure of this Information to the public would permit NCC's competitors and potential competitors to "freeload" off of the substantial research and business analysis that enabled NCC to adopt the business decisions and make the investments set forth in the Information. With access to the Information, NCC's competitors will know — without investing their own time and resources — precisely what type and configuration of network facilities are necessary to serve the market in which NCC operates. Moreover, if the public is permitted to access the Information, NCC's competitors will also be able — while investing only minimal time and resources — to use NCC's cost data to reverse-engineer their own rate structure and business development strategy. If, however, the Commission classifies the Information as confidential, NCC's competitors will be rightly forced to bear their own cost of perpetuating or starting-up their own competitive ventures.

807 KAR 5:001 § 7(2)(a)(1) and KRS 61.878(1)(c)(1) expressly authorize the Commission to classify the Information as confidential (and thereby restrict public access to the Information), provided the disclosure of the Information to the public would permit NCC's competitors to gain an unfair competitive advantage. For the reasons set forth above, the disclosure of the Information will provide NCC's competitors with an unfair competitive advantage by permitting them to freeload off of the technical and financial secrets that have been gained by NCC's own competitive efforts. Accordingly, the Commission should classify the Information as confidential pursuant to 807 KAR 5:001 § 7 and KRS 61.878(1)(c)(1).

Respectfully submitted,



John E. Selent
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**COUNSEL TO NORTH CENTRAL
COMMUNICATIONS, INCORPORATED**

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Petition for Confidential Treatment of Certain Information in North Central Communications, Incorporated's Responses to the Commission's Initial Data Requests (with a redacted copy of the Information for which confidentiality is being sought) was served by first-class United States mail, postage-prepaid, this 10th day of December, 2003, upon the following individuals.

Stephen R. Byars
Vice President-External Affairs
Kentucky ALLTEL, Inc.
P.O. Box 1650
Lexington, KY 40588-1650



**COUNSEL TO NORTH CENTRAL
COMMUNICATIONS, INCORPORATED**

b. There is no technical restriction on the use of NCC's service as either a primary service or secondary service. NCC customers may have both NCC services and service from another provider at the same premises. NCC has no way of determining how many of its lines might be considered "primary" or "secondary."

QUESTION NO. 5: Provide a detailed history of plant equipment improvements or investments by NCC since it began providing competitive local exchange service.

RESPONSE:

QUESTION NO. 6: Provide a description of the approximate geographic area and the population covered by NCC and any areas of planned expansion. Provide a map of the actual area covered and any planned areas of expansion.

RESPONSE: Relying on US Census data, the company estimates the population of Scottsville at just over 4,327 with a total of 1,839 households. NCC anticipates that its serving area encompasses the entire population of that exchange. Its operating map, included in Attachment 1, is based on the Scottsville exchange area published by ALLTEL in its local tariff.

QUESTION NO. 7: Is NCC willing and able to serve all customers within the above-described geographic area?

RESPONSE: NCC is willing and able to serve all customers in the Scottsville exchange described in Question 6, above.

QUESTION NO. 8: Has NCC identified the amount of federal high cost universal service funding associated with this area?